Supreme Court, U.S.
FILED
AUG 18 1993
OFFICE OF THE CLERK

(3)

No. 93-54

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

GLORIA KELLEY, EX-EMPLOYEE,

Petitioner (PRO SE)

VS.

KIRKPATRICK & LOCKHART, a professional association consisting of partners engaged in the practice of law, BRIAN FOREMNY, Partner, Individually and as agent of KIRKPATRICK & LOCKHART, REGINA MARCH, Office Administrator, individually and as agent of KIRKPATRICK & LOCKHART, jointly and severally,

EX-EMPLOYER, Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE 11TH CIRCUIT

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. PETITIONER'S REPLY TO BRIEF IN OPPOSITION

In support of my Reply to Brief In Opposition, I state as follows:

1. In a good-faith attempt at settling this matter out of court, I provided all my exhibits/evidence to Respondents. My main objective in providing Defendants all my exhibits prior to filing the lawsuit was to prove to them that I have a legitimate claim and to encourage settlement. I wanted to save time, money and the Court's valuable time. However, when faced with the overwhelming and compelling evidence, Respondents and their attorneys acted in bad-faith and forced me into the courts. Respondents' main objective was to obstruct justice and to deny me access to the courts, as is clearly evident from the review of the record. They knew full well that I did

not and do not have the financial means to pay an attorney. They also knew that they could manipulate the rules of procedure to work against me. They abused the rules of procedure to harass me and wear me down.

2. Former state Supreme Court Chief Justice, Alan Sundberg chaired the commission to study, among other things, the administration of the legal system. He found that:

> 'a common thread was lack of professionalism,' and that the pretrial discovery procedures have been used as a burdensome device and to bankrupt the other side--that the attorneys' aim has been to win at all costs, and that litigation is war rather than the search for the truth. Former Justice Alan Sundberg said that the Courts should do more to curb such disputes. "Curb 'Rambo' Litigators, Panel Says," The Miami Herald, February 1993 (approximately).[1]

3. Additionally, Fred Grimm, a writer for the Miami Herald, stated in his

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[1] I am not sure of the date as I forgot to note it.

article that:

'attorneys as hired thugs' have been using the law as a 'blunt instrument'...access to government is a basic right that ought to be nearly immune to such tactics. But corporate lawyers, who use lawsuits like fill dirt to bury citizen opposition, tend to forget the little niceties of democratic government. "Suits Camouflage Brute Intimidation," The Miami Herald, August 16, 1992, p. 7B.

4. When I provided Respondents all my material relevant to the issues and proving the merits of my case, little did I know that one of the most important amendments proposed by Federal Judge William Schwarzer, Director of the Federal Judicial Center requires:

all parties to a lawsuit to disclose at the early stages of a case any material that is relevant to the issues. In the ensuing discussion, panel members elaborated on at least two advantages to this rule change: such mandatory disclosure of relevant material could first curtail the use of interrogatories and document requests, and thus reduce one of the most significant expenses of litigation; and second, enable both sides to evaluate the merits of their cases much sooner, and thus, encourage earlier settlement. (Emphasis supplied). "It's a

Matter of Ethics: Responsible Practice In An Increasingly Competitive World," The Florida Bar Journal, February 1993.

THE ISSUE OF HARASSMENT, ABUSE OF JUDICIAL PROCESS, USE OF THE LAW AS A BLUNT INSTRUMENT AND DENIAL OF ACCESS TO THE COURTS IS ***THE VORTEX UPON WHICH THIS CASE SPINS, AND UPON WHICH OUR DEMOCRACY SPINS OUT OF CONTROL.*** THE POWERFUL AND ABUSIVE ATTORNEYS HAVE A CHOKEHOLD ON THE COURT SYSTEM **WHICH MUST BE BROKEN**. OUR GOVERNMENT IS A GOVERNMENT **OF** THE **PEOPLE**, **FOR** THE **PEOPLE** AND **BY** THE **PEOPLE**. OUR GOVERNMENT IS NOT A GOVERNMENT OF THE POWERFUL AND ABUSIVE GROUPS. **WE ARE LOSING OUR DEMOCRACY**.

5. Further, the trial court was bound to review all the exhibits attached to the Complaint, Conley v. Gibson, 355 U.S. 41, 45-46 (1957) and translate Respondents' Motion to Dismiss into a motion for summary judgment. First Chicago Corp.

Securities Litigation, N.D. Ill., 1991 769 F.Supp, 1444; Cortec Industries, Inc. v. Sum Holding L.P., C.A. 2 (N.Y. 1991), 949 F.2d 42, cert. den. 112 S.Ct. 1561, 118 L.Ed.2d 208. In fact, In Conley, id. at page 48, the Supreme Court states:

> The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. (Emphasis supplied).

6. Finally, I am entitled to summary disposition of my appeal because the merits are so clear as to justify expedited action. Walker v. Washington, 1980, 627 F.2d 541, 201 U.S.App.D.C. 82, certiorari denied 101 S.Ct. 532, 449 U.S. 994, 66 L.Ed.2d 292;

AND

Where time is of the essence in appeal because important public policy issues are involved or where rights delayed are rights denied or one of parties is clearly right as a matter of

law so that there can be no substantial question as to outcome of the case, summary disposition of appeal is proper (Emphasis supplied) Groendyke Transport, Inc. v. Davis, C.A. Tex. 1969, 406 F.2d 1158, certiorari denied 89 S.Ct. 1628, 394 U.S. 1012, 23 L.Ed.2d 39.

WHEREFORE, Certiorari must be granted and summary judgment entered in my favor. To do otherwise would be manifest injustice and would send the wrong message to the attorneys that it is okay to abuse the judicial process to harass claimants and deny them access to the courts.

II. REBUTTAL TO BRIEF IN OPPOSITION

ADA CLAIM:

I did exhaust my administrative claims. I filed the right-to-sue letter ("Letter") on December 3, 1991. The Letter was issued by the Dade County Equal Opportunity Board which is the local agency handling discrimination complaints and working in concert with the EEOC.

DIVERSITY JURISDICTION

KIRKPATRICK & LOCKHART ("K&L") is a Pittsburgh partnership. K&L is a Defendant in the case. Albert Conti, agent of K&L traveled from Pittsburgh to Miami and ratified the dismissal. There is complete jurisdiction.

FREEDOM OF SPEECH

In Sheet Metal Workers Int'l. Ass'n v. Lynn, 109 S.Ct.639 (1989), the amendment to the LMRDA was 'aimed at enlarged protection for members of unions paralleling certain rights guaranteed by the Federal Constitution, at page 643 (Emphasis supplied). I never signed any agreement giving up my constitutional right to free speech. I was never told that in order to keep my job I had to subject myself to psychological cruelty, or that I was not supposed to question why I was treated abusively.

Additionally, the LMRDA 'was the product of congressional concern with widespread abuses of power by union leadership.' Id. at p.643. The widespread abuses of power has spread further in the private sector[2]. The private employer has become a quasi-government. It controls our lives and our health. See "Toil and Trouble: Crisis in the American Workplace," by Elinor J. Brecher, The Miami Herald, March 21, 1993; St. Paul Fire and Marine Insurance Company's American Workers Under Pressure, study by Stacey K. Kohler, Ph.D., Organizational Psychologist, Study Coordinator, (1992).

Furthermore, private employers and/or their agents have become very abusive. They hide behind "legal" tactics to

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[2]The union is private sector.

effectuate harassment, intimidation and humiliation. They negatively exercise their economic power over the hard-working employee who is doing the utmost to earn his/her living. AND THEN WE WONDER WHY THERE IS SO MUCH MENTAL ILLNESS. Through their abuse of economic power over the employee, the private sector is violating our constitutional right to pursue our happiness which can only be achieved by earning our living.

All the employer has to do is say: this is a right-to-work state. We can hire and fire at will. That is their <u>license</u> to harass, abuse, intimidate and kick us like dogs. We are human beings, entitled to our dignity. The U.S. Constitution protects my right to the pursuit of happiness through labor. The right to follow any of the common occupations of life is an inalienable

right guaranteed by the Declaration of Independence under the phrase "pursuit of happiness." Allgeyer v. Louisiana, 165 U.S. 578 (1897).

CONCLUSION

WHEREFORE, I respectfully reiterate that Certiorari must be granted and summary judgment entered in my favor. To do otherwise would be manifest injustice and would send the wrong message to the powerful and abusive attorneys that it is okay to abuse the judicial process to harass claimants and deny them access to the courts.

RESPECTFULLY SUBMITTED,

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DATED: August 16, 1993 Gloria Kelley